

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Petition for Clarification of Hawk Relay)	CG Docket No. 03-123
Concerning the Provision of Deaf Blind Relay)	
Service (DBRS))	

Comments of the American Association of the Deaf-Blind

The American Association of the Deaf-Blind ("AADB")¹ hereby submits its comments in response to the Commission's *Public Notice* in the above-captioned proceeding² regarding a petition for clarification filed by Hawk Relay ("Hawk Relay").³ These comments are supported by the following national and state consumer organizations for the deaf and the heard of hearing: Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), National Association of the Deaf ("NAD"), Hearing Loss Association of America ("HLAA"), Association of Late-Deafened Adults ("ALDA"), Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), and California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH") (collectively with AADB, "Consumer Groups").

¹ AADB advocates for the deaf-blind community on a variety of issues including but not limited to emergency preparedness, employment, and technology. AADB actively educates the public through presentations, exhibits, and meetings on federal and state level to increase awareness on the needs of people with dual hearing and vision loss. AADB publishes a free monthly e-newsletter "AADB Today" and a magazine "The Deaf-Blind American" that focuses on a hot topic in the national deaf-blind community.

² See *Consumer & Governmental Affairs Bureau Seeks Comments on Petition for Clarification Concerning the Provision of Deaf Blind Relay Service (DBRS)*, CG Docket No. 03-123, *Public Notice*, DA 07-4924 (rel. Dec. 7, 2007) ("*Public Notice*").

³ See *Petition of Hawk Relay for Clarification on Deaf-Blind Relay Services*, CG Docket No. 03-123 (filed May 18, 2007) ("*Hawk Petition*").

To date, the Commission has consistently emphasized the critical role of Telecommunications Relay Service (“TRS”) in the lives of people who are deaf or hard of hearing or who have a speech disability. Telecommunications plays an important role in a person’s ability to participate in today’s society. TRS provides functionally equivalent telephone service to a significant number of Americans who, without it, may not be able to make or receive calls from others. For reasons set forth below, the Consumer Groups urge the Commission to ensure that any decisions, rules or policies adopted in response to the Hawk Petition are fully consistent with the Commission’s responsibility to make certain that functionally equivalent telephone service is available to all persons, including deaf-blind individuals. In order to meet this responsibility, the Commission should ensure that members of the deaf-blind community are given ample choices to meet their individual communication needs. Further, the Commission should provide support through the TRS fund for new and innovative services that provide functionally equivalent telephone services for all people with hearing disabilities, including those who also have vision loss. Although seeking public input on the Hawk Petition is certainly a step towards meeting that goal, the Consumer Groups suggest that the Commission first convene a summit of all interested stakeholders to determine what the best solutions are for deaf-blind individuals, rather than focusing solely on one possible service for deaf-blind individuals.

The Consumer Groups have actively participated in the Commission’s earlier proceedings involving telecommunications for individuals with hearing and speech disabilities. The Consumer Groups’ objective has always been to ensure that the Commission’s rules and policies promote equal access to telecommunications and media for all Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind so that they may equal access to and an equal opportunity to benefit from the telecommunication revolution to which they are entitled.

I. DEAF-BLIND INDIVIDUALS SHOULD HAVE A VARIETY OF RELAY SERVICES FROM WHICH TO CHOOSE

At the outset, it must be emphasized that the Consumer Groups support a form of Deaf-Blind Relay Service (DBRS), as described in the Hawk Petition, as it can provide the ability for many deaf-blind individuals to communicate by telephone. The Consumer Groups moreover believe that the use of Communication Facilitators (“CFs”) to assist the deaf-blind user to place or receive a call and to interpret the ensuing conversations can be an effective tool to enable deaf-blind individuals to communicate among themselves and with others. Deaf-blind individuals, however, must have a choice of DBRSs to choose from, and should not be limited to one form of DBRS offered by one TRS provider.

The deaf-blind community is very diverse – some deaf-blind individuals were born hearing and sighted and became deaf-blind later in life, some were born deaf and became blind later, others were born blind and became deaf later, and of course, some were born deaf-blind. This diversity is even more pronounced when one considers that there are varying degrees of deafness and blindness, many of which include some functional hearing or vision. Moreover, the variety of ways deaf-blind individuals communicate includes: American Sign Language (ASL) or signing in English word order (PSE) by close signing, small space signing, tracking (receiver’s hand on signer’s wrist to follow movement of signs), or tactile signing (receiver’s hand(s) on signer’s hand(s) to follow handshape and movement of signs), lip-reading/speech through assistive listening devices (FM, loop, cochlear implants, hearing aids), Braille communication devices that enable interaction (Braille TTY’s, Braille note takers, devices that have a keyboard at one end for the speaker to type and Braille output on the other end for the deaf-blind person to read communication in Braille), finger spelling only, and print on palm (printing block letters on the palm of the deaf-blind person). Thus, the options for deaf-blind

relay services to serve the community should be equally diverse. The Commission must understand that, while Hawk Relay's proposed form of DBRS may be effective for some deaf-blind individuals, other forms of DBRS or technologies may be effective or preferred by other deaf-blind individuals. Deaf-blind individuals will benefit by having a choice of DBRS providers, and the addition of new providers will not only enhance competition, but also advance technological development, increase quality of service, and reduce costs. This has been evident with the existing provision of Video Relay Services (VRS) and Internet Protocol (IP) Relay services in the market. The Commission should, therefore, refrain from deeming Hawk Relay or the form of DBRS described in the Hawk Petition as the *only* provider or form of DBRS for deaf-blind individuals, but encourage multiple providers and forms of DBRS.

The Commission must always be mindful of the need to encourage innovation, research and development when adopting requirements for all forms of TRS. For example, in the last several decades, communication technology has been progressively becoming more accessible for individuals with hearing loss. TRS was intended to provide functionally equivalent telephone service for persons with hearing and speech disabilities. Now, there is competition in the interstate TRS market, particularly with the Internet-based TRS services (IP Relay and VRS). This competition has resulted in the establishment of multiple relay service providers from which members of the deaf and hard of hearing community can choose.

By contrast, the deaf-blind population is one of the most underserved populations with respect to the provision of telecommunication services. Current technologies for serving the community, such as Braille TTY, large display TTY, and Braille print out, are not effective for many individuals who are deaf-blind, nor are they easily accessible or easy to use.⁴ Although

⁴ TDI has demonstrated that TTY and other traditional relay services are inherently hampered by delay and inaccuracies because they rely on an operator to repeat typewritten messages of a

Hawk Relay's proposal is a step in the right direction of expanding available and effective TRS and consumer choice, adopting in whole cloth the Hawk Petition without first seeking comment on alternative or additional effective relay services for deaf-blind individuals is not the way to promote an atmosphere for progress.

The Commission should also encourage existing TRS providers, particularly VRS providers, to better accommodate the needs of deaf-blind individuals. Since, as stated above, the deaf-blind community is diverse, and since the degree of hearing and sight varies within the community, some members of the community can make use of existing TRS if providers were to abide by certain minimum standards. For example, the Commission can readily effectuate a DBRS to serve the portion of the community that has low vision by amending the operational standards in Section 64.604(a) of the Commission's rules. Specifically, VRS Communication Assistants can be required to wear clothes that contrast with their skin color and have a contrasting background. Such simple requirements would enable more deaf individuals who have low vision to make use of existing VRS, that may be more cost efficient and user friendly than other forms of DBRS. While the Commission should ensure that current relay services are readily available to individuals who are deaf-blind, the Commission needs to identify and authorize for reimbursement from the TRS fund other forms of effective relay services for deaf-blind individuals. Such relay services may include Communication Facilitators providing services on-site at residences, businesses, and other public places. Such support would meet the needs of a segment of the deaf-blind population that currently have no access to existing relay services.

person and type the responses of the other person on the call. In the interest of brevity, those previously filed analyses are incorporated herein by reference and need not be discussed in detail. *See, e.g.,* Comments of the Telecommunications for the Deaf, Inc., CC Docket No. 98-67, at 6-10 (filed Aug. 26, 2003).

II. THE COMMISSION SHOULD CONVENE A SUMMIT OF ALL INTERESTED STAKEHOLDERS

Given the commitment of resources and effort needed to provide functionally equivalent telephone service for deaf-blind individuals, a collaborative, cooperative approach will be the most effective way to achieve the goals that both the Commission and deaf-blind individuals share. Thus, the Commission should first convene a deaf-blind solutions summit of government and industry leaders, along with representatives of the deaf-blind community. The goal of this summit would be to discuss and identify ways to enable deaf-blind individuals to have functionally equivalent telephone services as mandated by Title IV of the Americans with Disabilities Act of 1990. Such a summit would be a starting point for a Notice of Inquiry (“NOI”), which the Consumer Groups requested in September 2007.⁵

At a minimum, the summit and subsequent NOI should assess: (1) the need and demand for deaf-blind relay services, (2) existing and potential methods of providing such services, and (3) the feasibility of such services. Participants should include: members of the deaf-blind community; TRS industry representatives, including Hawk Relay; AADB and other consumer advocacy organizations; and FCC staff. Rather than act prematurely, the Commission should sponsor and draw from such a forum before reaching conclusions about DBRS.

III. DBRS FALLS WITHIN THE DEFINITION OF TRS

The Consumer Groups submit that DBRS, including Hawk Relay’s proposed DBRS, falls within the definition of TRS as set forth in section 225(a)(3) of the Communications Act of 1934.⁶ As the Commission established in the August 1, 2004 *Declaratory Ruling* in CG Docket No. 98-67, “[i]n enacting section 225, Congress did not narrow its definition of TRS only to a

⁵ See Request of the American Association of the Deaf-Blind for a Notice of Inquiry Regarding Telecommunications Relay Services for People Who Are Deaf Blind (filed Sept. 24, 2007).

⁶ 47 U.S.C. § 225(a)(3).

specific category of services otherwise defined in the Communications Act, such as ‘telecommunications services.’”⁷

Hawk Relay’s form of DBRS relies on a CF to assist the caller, in person, to make or receive a telephone call. The trained and qualified CF will utilize the deaf-blind person’s preferred method of communication (*e.g.*, tactile signing or up-close signing) to facilitate the communication exchange. In this light, CFs essentially perform the equivalent functions that a Communication Assistant (“CA”) performs under Section 64.601 of the Commission’s rules.⁸ A DBRS, such as that proposed by Hawk Relay, will meet the functional equivalency requirements of Section 225 and should thus satisfy the definition of “telecommunications relay service” pursuant to the Act.

Concluding that DBRS is a TRS is also consistent with the overall purpose of Section 225, which, as the Commission has noted, is to “ensure that interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”⁹ Further, Section 225 specifically directs the Commission to “ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of this Communications Act, the use of existing technology and do not discourage or impair the development of improved technology.”¹⁰

IV. THE COMMISSION SHOULD ADMINISTER DBRS AND ALLOW COSTS FOR COMMUNICATION FACILITATORS TO BE RECOVERED

⁷ *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 18 FCC Rcd 16121, 16124 (2003) *citing* 47 U.S.C. § 225(a)(3) (“*TRS Declaratory Ruling*”).

⁸ *See* 47 C.F.R. § 64.601.

⁹ *See TRS Declaratory Ruling*, 18 FCC Rcd at 16124 *citing* 47 U.S.C. § 225(b)(1).

¹⁰ 47 U.S.C. § 225(d)(2).

The Commission should treat all DBRS calls as jurisdictionally interstate in nature, retain jurisdiction over DBRS for both oversight and funding purposes, and allow for the costs of CFs to be recoverable. Most states now only contract with one provider to provide intrastate relay services. Thus, to the extent that DBRS were to be treated as jurisdictionally intrastate in nature, the choices for intrastate DBRS will be limited in most cases to just one provider. The financial impact of allocating DBRS costs to a state relay fund may be significant for many states, which could lead to underfunding for DBRS. If not properly funded, it is likely that the availability and quality of DBRS will falter. Furthermore, since the population of deaf-blind residents vary from state-to-state, interstate TRS funding is appropriate to offset the costs in states that have a smaller population of deaf-blind residents and where the per minute cost of providing DBRS may be significantly higher.

The main purpose of the ADA was to facilitate the integration of people with disabilities into the mainstream of society so that no person would be left behind. As demonstrated above, DBRS can be an essential link that connects deaf-blind individuals to the rest of the world. The deaf-blind community includes people who use a variety of communication methods, may use American Sign Language in an unconventional way, or have minimal or limited language skills. Such people must be included and provided access to TRS. In addition, since CFs are essential to quality DBRS conversations, the ADA mandates that CFs be used and that the use of CFs be compensated. If the reimbursement rate is non-compensatory, the availability and quality of DBRS cannot be maintained.

If, however, the Commission were to establish an allocation between the interstate and intrastate TRS funds for DBRS, there would first need to be a requirement that DBRS is a mandatory service under the Commission rules. Otherwise, some states may not fund DBRS,

thereby harming potential users in those states. The Commission needs to take into account the ability of a state relay fund to comply with any federal mandate that increases a state's funding responsibilities for additional forms of relay service.

V. CONCLUSION

The Commission should ensure that its final decision on DBRS represents the ultimate goal – functionally equivalent telephone service leading to increased independence and self-determination for all deaf-blind individuals – and support the diverse needs and abilities of people with such disabilities. To achieve this goal, the Commission should first hold a summit to further address DBRS issues before deeming Hawk Relay's DBRS as the only DBRS available to deaf-blind individuals. The summit will examine other issues that cannot be fully considered in the time allotted to respond to the Commission's Public Notice related to the Hawk Petition.

Respectfully submitted,



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